



REPUBLIC OF KENYA



KENYA LAW
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**Njue v Kiura (Environment and Land Appeal E002 of 2022)
[2025] KEELC 3658 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3658 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E002 OF 2022**

AK BOR, J

APRIL 28, 2025

BETWEEN

ATANASIO NDWIGA NJUE APPELLANT

AND

PATRICK NJIRU KIURA RESPONDENT

JUDGMENT

1. This appeal arose from the decision of the Business Premises and Rent Tribunal (the Tribunal) in BPRT Case No. E011 of 2021 in which the Tribunal found that the Appellant was not a tenant. In the memorandum of appeal filed on 17/2/2022, the Appellant faulted the Chairman of the Tribunal for failing to order the Respondent to issue the mandatory 60 days' notice of termination and for awarding costs which were excessive. He also faulted the Tribunal for failing to appreciate that he had paid close to Kshs. 3 million to the Respondent as rent. He claimed that the Chairman misdirected himself throughout the proceedings and that he showed open bias against the Appellant and his counsel. He sought an order that he was a legitimate tenant and therefore protected by the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (Cap 301) and that his tenancy could only be terminated in accordance with the Act.
2. The appeal was canvassed through written submissions which the court duly read and considered. The Appellant submitted that on 11/1/2020, he entered into a sublease with Paul Theuri Mutahi for the sale of the business known as Nile Bar and Restaurant vide which the Respondent was to be paid Kshs. 1,500,000/= as part of the sub-lease agreement. He relied on the demand letter dated 8/4/2020 which mentioned the manner in which the payments to the former tenant were to be made for the purchase of the business as a going concern. He also relied on a document written "payment agreement" dated 11/01/2020 which was executed by the Appellant and Respondent with Paul Theuri Mutahi described as the former tenant.



3. He submitted that the Respondent introduced him to Kenya Power & Lighting Company (KPLC), Embu branch and EWASCO Water Company. He urged that the Respondent never denied receiving Kshs. 3 million from him and submitted that he was a tenant recognised by law. He argued that there was a landlord-tenancy agreement expressly done or verbally done or by conduct and faulted the Tribunal for finding otherwise. He sought to have accounts taken of the rent paid and if there were arrears, that they be paid forthwith.
4. The Respondent filed submissions in which he urged that the Appellant was a trespasser and that there was no landlord-tenant relationship in existence. He explained that he had filed Embu CM ELC Case No. E061 of 2021 claiming that the Appellant was a trespasser and that this court should call for that file and peruse it because the assertions in that case were not in dispute. He maintained that the tenant to whom he leased the demised premises was Paul Theuri and not the Appellant. He claimed that Paul Theuri abandoned the leased premises and stopped paying rent. That when the Respondent visited the premises, he found the Appellant operating a business on the leased premises.
5. The Respondent invited the court to exercise its powers under Section 15(2) Landlord and Tenants (Shops, Hotels and Catering Establishments) Act and find that the Appellant had failed to prove that he was a tenant. He denied signing the payment agreement dated 11/01/2020 and added that the Appellant should have called Paul Theuri as a witness while observing that the document was not attested and was not in writing as required by Section 3(3) of the *Law of Contract Act*. The Respondent denied authoring the letters addressed to KPLC and EWASCO Embu and argued that in any event, those letters would not have amounted to a lease agreement.
6. He denied receiving any rent from the Appellant. He pointed out that the bank statements which the Appellant relied on were for transactions undertaken in November 2019. He denied that the Appellant had been paying rent monthly of Kshs. 180,000/= and added that he had failed to provide evidence of this.
7. The Respondent relied on Sections 107 and 109 of the *Evidence Act* on the burden of proof and urged that the Appellant had failed to discharge the burden to prove that he paid rent to the Respondent. He maintained that the Tribunal had made the correct findings when it downed its tools after determining that it did not have jurisdiction pursuant to Section 12 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act after concluding that there was no tenancy relationship between the Appellant and the Respondent.
8. The Appellant filed supplementary submissions and referred the court to the proceedings and documents filed in CM ELC Case No. E061 of 2021. He maintained that the Respondent had been receiving rent from him.
9. The issue for determination is whether the Tribunal erred when it found that there was no tenancy relationship between the Appellant and the Respondent. The Appellant's claim is that he was a sub-lessee of the leased premises owned by the Respondent. His claim is that the premises were sublet to him by Paul Theuri when he bought the business known as Nile Bar and Restaurant as a going concern from him.
10. A sub lessee is not the same as a lessee in the strict legal sense. The Respondent had entered into a lease with Paul Theuri which was to terminate on 31/9/2020 (sic) with an option to renew. Clause 7 of the lease prohibited the tenant from subletting or assigning the premises without the landlord's consent. There was no written lease agreement between the Appellant and the Respondent. It is not clear when the sublease the Appellant relied on started running and one cannot establish the term and



conditions of that sublease. The bank statements only show what appears to be withdrawals made by the Appellant from the ATM, most of which relate to 2019. In total they add up to Kshs. 350,000/=.

11. Rather than require this court to call for the file in relation to CM ELC Case No. E061 of 2021, it is appropriate for the parties to fast track the hearing of that suit so that a final determination can be made as to whether the Appellant is a trespasser in the Respondent's premises.
12. The appeal is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY AT EMBU THIS 28TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Josephine Ngumbao for the Respondent

Diana Kemboi- Court Assistant

No appearance for the Appellant

